

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

NOLAN ENTERPRISES, INC. D/B/A
CENTERFORD CLUB

and

Case 09-CA-220677

BRANDI CAMPBELL, AN INDIVIDUAL

**COUNSEL FOR THE GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT**

On December 21, 2018, Respondent filed its motion moving for summary judgment. Counsel for the General Counsel respectfully opposes Respondent's motion for the reasons stated below. Briefly put, Respondent's motion makes disputed assertions that perfectly illustrate why a hearing in this matter is necessary.

I. The Instant Complaint

On September 28, 2018, a Complaint and Notice of Hearing issued in the present matter alleging, *inter alia*, that on about March 12, 2018, *Respondent's employee* [emphasis added], Brandi Campbell, engaged in concerted activities with other employees for the purposes of mutual aid and protection by providing owner Fred Tegtmeier with a letter outlining a list of employees' complaints concerning their terms and conditions of employment. The complaint further alleged that on about April 5, 2018, Respondent discharged Brandi Campbell, and did so because Campbell engaged in protected concerted activities and to discourage employees from engaging in these or other concerted activities. In its amended answer filed on December 18, 2018, Respondent raises the affirmative defense that the Board lacks jurisdiction to hear this matter because Charging Party/Discriminatee Brandi Campbell (hereafter Campbell) was not an

employee of Respondent within the meaning of the Act. Respondent makes the same argument in its motion for summary judgment.

II. Respondent's Motion Should be Denied

Respondent's motion for summary judgment should be denied. Rather than present a cogent argument for summary judgment, Respondent's motion does the opposite: it highlights some of the very factual disputes that demonstrate why this complaint must be litigated, absent settlement by the parties. It is well settled that in ruling on a motion to dismiss, "the Board construes the complaint in a light most favorable to the General Counsel, accepts all factual allegations as true, and determines whether the General Counsel can prove any set of facts in support of his claims that would entitle him to relief." *Detroit Newspapers*, 330 NLRB 524 at fn. 7 (2000).

Counsel for the General Counsel will not countenance Respondent's attempts to engage in pre-trial discovery via this motion. Nor will Counsel for the General Counsel squander the Board's time responding to all of Respondents' mischaracterizations of the underlying facts of this case or otherwise recite for Respondent all of the facts that General Counsel has to support its complaint as these matters are not properly before the Board at this time and are more appropriate for resolution by an Administrative Law Judge.¹ Contrary to Respondent's claims, the General Counsel disputes Respondent's contentions as they relate to Campbell's employment status and how Respondent runs its facility, and the evidence to be adduced at trial will demonstrate ample support for the position that Campbell and other dancers at Respondent's facility are employees covered by the Act. *FedEx Home Delivery*, 361 NLRB 610 (2014).

In order to support a motion for summary judgment, Respondent must show an absence of genuine issues of material fact. *Regency Grande Nursing & Rehabilitation Center*, 347 NLRB

¹ The hearing is currently scheduled to begin on January 28, 2019.

1143 (2006). Respondent's motion only highlights the existence of an issue of material fact – the extent to which Respondent exerts control over dancers and whether the dancers are employees under the Act – a fact which is properly determined by an Administrative Law Judge. Respondent is free to present facts in support of this position at hearing. However, summary judgment is wholly inappropriate. Moreover, in addition to this material fact, Respondent's answer to the complaint places additional material facts in issue. Therefore, Counsel for the General Counsel respectfully urges the Board to deny Respondent's Motion for Summary Judgment.

III. Conclusion

The complaint raises factual and legal disputes necessitating a hearing on the merits absent settlement by the parties. The complaint clearly states a claim on which relief may, and should, be granted. Summary judgment is thus unwarranted, and Counsel for the General Counsel respectfully requests that Respondent's motion be denied.

Dated: January 4, 2019

Respectfully submitted,

/s/ Zuzana Murarova

Zuzana Murarova
Counsel for the General Counsel
Region 9, National Labor Relations Board
John Weld Peck Federal Building, Room 3003
550 Main Street
Cincinnati, Ohio 45202-3271

CERTIFICATE OF SERVICE

January 4, 2019

I hereby certify that I served Counsel for the General Counsel's Opposition to Respondent's Motion for Summary Judgment on this date on the following parties by electronic mail.

Christina Corl, Esq.
Plunkett and Cooney
300 E Broad St Ste 590
Columbus, OH 43215-3758
Email: ccorl@plunkettcooney.com

Ms. Brandi Campbell
320 Beach Ave Apt 1D
La Grange Park, IL 60526-6027
Email: brandi.86.brandi@gmail.com

Respectfully submitted,

/s/ Zuzana Murarova

Zuzana Murarova
Counsel for the General Counsel
Region 9, National Labor Relations Board
John Weld Peck Federal Building, Room 3003
550 Main Street
Cincinnati, Ohio 45202-3271